

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CARLOS MEDRANO,	:	
	:	C.A. No. 08A-06-008 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
STATE OF DELAWARE,	:	
DEPARTMENT OF LABOR,	:	
WORKERS COMPENSATION	:	
FUND and BEARING	:	
CONSTRUCTION,	:	
	:	
Defendant.	:	

Submitted: June 11, 2009
Decided: September 30, 2009

ORDER

Upon an Appeal of a Decision of the
Industrial Accident Board.
Reversed and Remanded.

Walt F. Schmittinger, Esquire and Kristi N. Vitola, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware; attorneys for Claimant Below-Appellant.

Andrew G. Kerber, Esquire, Department of Justice, Wilmington, Delaware; attorneys for the Workers Compensation Fund.

WITHAM, R.J.

Carlos Medrano, the Claimant Below, filed an appeal from the May 14, 2008 decision of the Industrial Accident Board (“IAB” or “Board”). The IAB considered Mr. Medrano’s request for an Order compelling the Workers’ Compensation Fund (“the Fund”) to issue payments during the pendency of his employer’s Petition for Review. The Board denied Mr. Medrano’s request because he did not file an Eligibility Certification form in a timely manner.

Decision of the IAB

Mr. Medrano was on an open agreement for total disability benefits with Bearing Construction (“Employer”). On September 18, 2007, Employer, seeking to terminate Mr. Medrano’s total disability benefits, filed a Petition for Review of the agreement. On January 17, 2008, the parties filed an agreement terminating total disability benefits. Employer then agreed to pay partial disability benefits. The Board’s Chief Hearing Officer signed the Order granting termination of total disability benefits on February 6, 2008.

Mr. Medrano, following resolution of the petition, notified his attorney that he had not been receiving disability benefits since Employer filed its Petition for Review. On March 7, 2008, Mr. Medrano filed an Eligibility Certification form and requested payment from September 18, 2007¹ through February 6, 2008.² The Department of Labor, however, wrote back indicating that the Fund would not issue

¹ The date Employer filed its Petition for Review.

² The date the Board signed the order ending total disability benefits.

benefits for a period of time after a read-in order had been signed.

The Board agreed with the Department of Labor and concluded that Mr. Medrano was not entitled to benefits from the Fund because the Eligibility Certification form was not filed in a timely manner. The Board, relying on *Pacheco v. Waste Management, Inc.*³, noted that Fund benefits will not be initiated until an Eligibility Certification form is completed and returned to the Office of Workers' Compensation. The Board explained that Mr. Medrano failed to file the required form until six months after the Petition for Review was filed and a month after the Termination Order was signed. Thus, the Fund is not required to compensate Mr. Medrano.

Standard of Review

The review of an Industrial Accident Board's decision is limited to an examination of the record for errors of law and a determination of whether substantial evidence exists to support the Board's findings of fact and conclusions of law.⁴ Substantial evidence equates to "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁵ This Court will not weigh the evidence,

³ IAB No. 1295134 (April 7, 2008).

⁴*Histed v. E.I. Dupont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

⁵*Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Federal Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

determine questions of credibility, or make its own factual findings.⁶ Errors of law are reviewed *de novo*. Absent error of law, the standard of review for a Board's decision is abuse of discretion.⁷ The Board has abused its discretion only when its decision has "exceeded the bounds of reason in view of the circumstances."⁸

Discussion

The facts are not in dispute, and, therefore, the issue before the Court is one of statutory interpretation. Section 2347 of the Workers' Compensation Act provides, in pertinent part, that:

Compensation payable to an employee, under this chapter, *shall not terminate* until and unless the Board enters an award ending the payment of compensation after a hearing upon review of an agreement or award
.....

Compensation *shall* be paid by the Department to the employee after the filing of the employer's petition to review from the Workers' Compensation Fund until the parties to an award or agreement consent to the termination or until the Board enters an order upon the employer's petition to review.⁹

Mr. Medrano contends that the Board erred as a matter of law when it denied him

⁶*Collins v. Giant Food, Inc.*, 1999 Del. Super. LEXIS 590 (quoting *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

⁷*Digiacomo v. Bd. of Pub. Educ.*, 507 A.2d 542, 546 (Del. 1986).

⁸*Willis v. Plastic Materials*, 2003 Del. Super. LEXIS 9 at *2-3.

⁹ 19 *Del. C.* § 2347 (emphasis added).

retroactive benefits from the Fund. The Court agrees.

Section 2347 was created pursuant to a legislative policy that “an injured employee shall not lose his compensation until there is a decision terminating compensation.”¹⁰ Consequently, such payments shall not be terminated during the pendency of a review of compensation for any reason other than an injured employee’s consent.¹¹ Mr. Medrano, therefore, correctly asserts that he was entitled to compensation from the Fund during the pendency of the proceedings.

Despite this, the State, arguing for the Fund, contends that Mr. Medrano is not entitled to retroactive payment from the Fund because he failed to follow the requisite procedure.¹² The Department requires a claimant to complete and return an Eligibility Certification form to the Office of Workers’ Compensation before payments commence. This form confirms that a claimant is entitled to payments from the Fund. According to Industrial Accident Board Rule 5(A), “[i]n all cases where forms are provided by the Department, all papers filed with the Board shall be on such forms,

¹⁰ *Watts v. Porter Indus.*, 1990 WL 261094, at *1 (Del. Super. Dec. 17, 1990) (*citing Hamilton v. Trivits*, 340 A.2d 178 (Del. Super. 1975) (the Court compared different versions of the statute and concluded that the legislative purpose was to assure continued compensation to an injured employee until a decision terminating compensation was made. The burden of bearing the cost of this compensation was placed on the Fund)); *see also Clements v. Diamond State Port Corp.*, 831 A.2d 870, 880 (Del. 2003) (explaining the legislative purpose was to assure continued compensation until claimant is found not be entitled to receive it).

¹¹ *Foraker v. NVF Co.*, 358 A.2d 730, 732 (Del. Super. 1976).

¹² *See Pacheco v. Waste Management Inc.*, IAB No. 1295134 (April 7, 2008) (refusing to grant retroactive payments from the Fund when claimant failed to complete and return an Eligibility Certification form in a timely manner).

and all applicable questions shall be answered.”¹³

Neither party contends that the Department failed to follow its standard procedure. That is, the Department presumably sent an Eligibility Certification form to Mr. Medrano once Bearing Construction filed its Petition for Review.¹⁴ Mr. Medrano, however, failed to return this form until one month after he agreed to temporary partial disability benefits, and six months after the Petition for Review was filed. Mr. Medrano has provided no explanation for this delay.

Nevertheless, the language of the statute is clear. Section 2347 provides that,

Compensation shall be paid by the Department to the employee after the filing of the employer’s Petition to Review from the Workers’ Compensation Fund until the parties to an award or agreement consent to the termination or until the Board enters an order upon the employer’s petition to review.¹⁵

Bearing Construction filed its Petition to Review on September 18, 2007. The Board signed the new agreement between Mr. Medrano and Bearing Construction on February 6, 2008. Mr. Medrano did not receive any compensation during this period.

The Delaware Supreme Court has recognized that “Delaware courts are to

¹³ Industrial Accident Board Rule 5(A); *see also Bethlehem Shipbuilding Corp. v. Mullen*, 119 A. 314, 316 (Del. Super. 1922) (holding that the rules of the Industrial Accident Board have the force and effect of a law).

¹⁴ It is worth noting that the Eligibility Certification form sent to Mr. Medrano contained no language indicating that the form must be received before payments would commence.

¹⁵ 19 *Del. C.* §2347.

interpret the Delaware Workers' Compensation Act liberally so as to effectuate its remedial purpose."¹⁶ That is, a liberal interpretation is used to "resolve any reasonable doubts in favor of the worker because it was for the workers' benefit that the act was passed."¹⁷

The purpose of Section 2347 is to prevent the harm associated with an employer's unilateral decision to suspend or terminate compensation.¹⁸ The statute accomplishes this purpose by providing the claimant with uninterrupted compensation until the matter is appropriately resolved.¹⁹ It should be pointed out that a Rule that is interpreted to contradict clear statutory language cannot stand. The Fund has failed to provide any legal authority supporting its decision to withhold compensation from Mr. Medrano.

¹⁶ *Hirneisen v. Champlain Cable Corp.*, 892 A.2d 1056, 1059 (Del. 2006) (citing *Konstantopoulos v. Westvaco Corp.*, 690 A.2d 936, 939 (Del. 1996)).

¹⁷ *Id.* (quoting 2A Norman J. Singer, *Southerland Statutory Construction* (6th Ed. 2000) §75:3 at 26).

¹⁸ See *Huffman v. C.C. Oliphant & Son*, 432 A.2d 1207, 1209-1210 (Del. 1981).

¹⁹ See *Id.*

Carlos Medrano v. Department of Labor

C.A. No. 08A-06-008 WLW

September 30, 2009

Conclusion

For the foregoing reasons, the decision of the Industrial Accident Board should be REVERSED and REMANDED for a determination consistent with this Court's decision. Mr. Medrano's request for attorneys' fees and costs pursuant to 19 *Del. C.* §2350(e) is denied as §2350(e) does not apply here.

IT IS SO ORDERED.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution